

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Certain of the Commission's	)	GC Docket No. 10-44
Part 1 Rules of Practice and Procedure and	)	
Part 0 Rules of Commission Organization	)	

### NOTICE OF PROPOSED RULEMAKING

**Adopted: February 18, 2010**

**Released: February 22, 2010**

**Comment Date: [45 days after date of publication in the Federal Register]**

**Reply Comment Date: [75 days after date of publication in the Federal Register]**

By the Commission: Chairman Genachowski and Commissioners Copps, McDowell and Clyburn issuing separate statements

#### **I. INTRODUCTION**

1. This Notice of Proposed Rulemaking seeks comment on proposed revisions to the Commission's Part 1 procedural rules and Part 0 organizational rules. The proposals are intended to increase efficiency and modernize our procedures, enhance the openness and transparency of Commission proceedings, and clarify certain procedural rules. In an attached appendix, we propose specific draft revised rules. We seek comment on the proposed rule language contained in that appendix, as well as the other proposals contained in this Notice of Proposed Rulemaking.<sup>1</sup>

2. The proposed rule revisions fall into three general categories. First, we seek to improve and streamline our processes governing reconsideration of Commission decisions. Specifically, we propose to delegate authority to the staff to dismiss or deny defective or repetitive petitions filed with the Commission for reconsideration of Commission decisions. We also propose to amend the rule that authorizes the Commission to reconsider a decision on its own motion within 30 days to make clear that the Commission may modify a decision, not merely set it aside or vacate it. Second, we seek to increase the efficiency of our docket management and make it easier for interested persons to follow and participate in our proceedings. To achieve this goal, we propose to expand the use of docketed proceedings, increase electronic filing of comments, and delegate authority to the staff in certain circumstances to notify parties electronically of docket filings and close inactive dockets. Third, we seek to address uncertainties that have developed in the application of two Part 1 rules. We propose to set a default effective date for FCC rules in the event the Commission does not specify an effective date in its rulemaking order. In addition, we propose to revise our computation of time rule to adopt the "next business day" approach when a Commission rule or order specifies that Commission action shall occur on a day when the agency is not open for business.

<sup>1</sup> We note that because the Part 1 and Part 0 rules are procedural and organizational in nature, notice and comment is not required under the Administrative Procedure Act. 5 U.S.C. § 553(b)(A) (notice and comment rulemaking requirements do not apply to rules of agency organization, procedure, or practice). Nonetheless, in the spirit of openness and transparency, and to assemble the best possible record to inform our decisions, we have elected voluntarily to utilize notice and comment procedures in this instance. *See also* nn.15, 23.

## II. DISCUSSION

### A. Reconsideration of Agency Decisions

#### 1. Sections 1.106 and 1.429 – Petitions for Reconsideration

3. We have two procedural rules governing petitions for reconsideration of Commission orders. Section 1.429<sup>2</sup> addresses petitions for reconsideration of final orders issued in notice and comment rulemaking proceedings. Section 1.106<sup>3</sup> is a “catch-all” provision that governs petitions for reconsideration in all agency proceedings other than rulemaking proceedings, that is, all adjudications.<sup>4</sup> The captions of the two rules, however, are generic and do not explicitly reflect the dichotomy between rulemaking and adjudication. We propose to change the captions of these two rules to reflect the categories of proceedings that each rule governs.

4. We also propose to amend these rules to allow the agency to resolve certain petitions for reconsideration more efficiently and expeditiously. The agency each year receives many petitions asking the full Commission to reconsider its decisions. Some of those petitions for reconsideration are procedurally defective or merely repeat arguments that the Commission previously has rejected. Such petitions do not warrant consideration by the full Commission, and we therefore propose to amend sections 1.429 and 1.106 to authorize the staff to dismiss or deny them on delegated authority.<sup>5</sup> A non-exhaustive list of such cases might include, for example, petitions that:

- omit information required by these rules to be included with a petition for reconsideration or otherwise fail to comply with procedural requirements set forth by the rules;
- fail to identify any material error, omission, or reason warranting reconsideration or fail to state with particularity the respects in which petitioner believes the action taken should be changed;
- rely on arguments that have been fully considered and rejected within the same proceeding;
- relate to matters outside the scope of the order for which reconsideration has been requested;
- rely on facts or arguments that could have been presented previously to the Commission or its staff but were not;
- relate to an order for which reconsideration has been previously denied on similar grounds; or
- are untimely.

We seek comment on these examples, as well as other categories of petitions for reconsideration that may not warrant action by the full Commission and might be appropriate for resolution by the staff on delegated authority. We propose to specify in our rules criteria governing petitions for reconsideration that would be subject to this approach. To that end, we propose draft rule revisions in the attached appendix.<sup>6</sup>

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<sup>2</sup> 47 C.F.R. § 1.429.

<sup>3</sup> 47 C.F.R. § 1.106.

<sup>4</sup> See 47 C.F.R. § 1.106(a)(1) (noting that the rule does not govern reconsideration of final rulemaking orders).

<sup>5</sup> For a similarly defective petition directed to a bureau or office (rather than the full Commission) seeking reconsideration of a staff-level decision, the relevant bureau or office chief also would have delegated authority to dismiss or deny the petition.

<sup>6</sup> A petitioner whose reconsideration petition was dismissed or denied by the staff may file an application to have the full Commission review the staff's action. See 47 U.S.C. § 155(c)(4); 47 C.F.R. § 1.115(a). In such circumstances, (continued....)

5. In addition, we propose to amend our reconsideration rules to make clear that paper copies of petitions for reconsideration may be submitted to the Commission's Secretary by mail, by commercial courier, or by hand. As discussed below, however, our goal is to increase the use of electronic filing of pleadings in the future. Thus, for those matters that are docketed on the Commission's Electronic Comment Filing System ("ECFS"), we strongly encourage persons to file any petitions for reconsideration of Commission action by electronic submission to ECFS.<sup>7</sup> We seek comment on this proposal.

6. Certain licensing proceedings have different electronic filing systems and procedures that are distinct from those that apply to ECFS. Pleadings filed electronically through the Commission's Universal Licensing System ("ULS"), for example, including petitions for reconsideration, are subject to separate procedures that we do not propose to amend at this time.<sup>8</sup>

7. Finally, we note that section 1.429 does not by its express terms apply to rules adopted without notice and comment.<sup>9</sup> We seek comment on whether we should amend section 1.429 to make clear that this rule, rather than the "catch-all" reconsideration provision in section 1.106, applies to petitions for reconsideration of Commission orders adopting rules without notice and comment.

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the filing of an application for review to the full Commission is a legal prerequisite for judicial review of the staff's action on reconsideration. *See* 47 U.S.C. § 155(c)(7); 47 C.F.R. § 1.115(k).

<sup>7</sup> To ensure that parties wishing to seek reconsideration have clear notice of our filing requirements, the proposed rule changes would emphasize that petitions for reconsideration submitted by electronic means other than ECFS (for example, by electronic mail) and petitions submitted directly to staff shall not be considered to have been properly filed absent a rule specifically permitting the alternative means of electronic filing for the particular submission at issue. Although a reconsideration petition submitted by electronic mail does not satisfy proper filing requirements absent a rule specifically permitting such a submission, it is still helpful and good practice to also send a copy of a reconsideration petition by electronic mail to any staff persons that the filer knows are involved with the proceeding or tend to be involved with the issues.

<sup>8</sup> For procedures governing electronic filing through ULS, *see*:

[http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-06-125A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-06-125A1.pdf) (announcing ULS can accept electronic pleadings); [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-06-45A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-06-45A1.pdf) (announcing auto-termination procedures - see page 6 #5); [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-294680A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-294680A1.pdf) (weekly Wireless Telecommunications Bureau PN, including how to file electronically).

<sup>9</sup> In certain circumstances, rules may be adopted without notice and comment. *See* 5 U.S.C. § 553(a)(1), (2); 5 U.S.C. § 553(b)(A); *see also* 47 C.F.R. § 1.412(b), (c).

## 2. Section 1.108 – Reconsideration on the Commission’s Own Motion

8. Section 1.108 of the Commission’s rules, captioned “Reconsideration on Commission’s own motion,” states:

The Commission may, on its own motion, set aside any action made or taken by it within 30 days from the date of public notice of such action, as that date is defined in § 1.4(b) of these rules.<sup>10</sup>

As the caption suggests, the purpose of the rule is to give the Commission, when acting on its own motion, the full panoply of powers implied by the term “reconsider.” As set forth in section 1.106(k)(1) of the Commission’s rules,<sup>11</sup> which concerns petitions for reconsideration in non-rulemaking proceedings, these powers include the power to reverse or modify an action, to remand a matter for further proceedings, or to initiate other further proceedings. One court, however, has construed the text of section 1.108 more narrowly, limiting its scope to the power to “set aside” an action in the literal sense. Under that court’s interpretation, the scope of permissible reconsiderations excludes revising or modifying a rule.<sup>12</sup> In order to clarify that section 1.108 does not limit the Commission’s flexibility to revisit its decisions on its own motion within 30 days, we propose revising that rule to conform with the fuller definition of “reconsider” in section 1.106(k)(1). We seek comment on this proposal.

## B. Docketing of Proceedings, Electronic Filing of Pleadings, and Electronic Notification

### 1. Expanded Use of Docketed Proceedings

9. The Commission assigns a docket number to many of its proceedings. These include notice and comment rulemaking proceedings and certain adjudicatory proceedings so designated by the Commission or the staff, such as adjudicatory proceedings that may be expected to attract large numbers of commenters.<sup>13</sup> For any proceeding that is assigned a formal docket number, the Commission’s Reference Information Center (a unit of the Consumer and Governmental Affairs Bureau) maintains the official administrative record in paper form, as well as the public files electronically on ECFS.<sup>14</sup>

10. Many proceedings before the Commission, however, are not docketed. These non-docketed proceedings include routine matters that may not be expected to involve large numbers of commenters or parties. In such circumstances, the individual bureau or office handling the matter may assign the proceeding a unique file number or other form of identifier instead of a formal docket number. In some types of matters, no numerical identifier is assigned. The relevant bureau or office also maintains the public files of the proceeding and assists the Office of General Counsel in preparing the certified list of items in the administrative record for purposes of judicial review. Often the record may be in paper format only, and thus is not susceptible to electronic search and query. In such cases, interested persons may find it difficult to follow and participate in non-docketed proceedings.

11. Given the limitations and challenges noted above regarding certain non-docketed proceedings, we believe we can and should enhance openness, transparency, and accuracy by utilizing the formal docket

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<sup>10</sup> 47 C.F.R. § 1.108.

<sup>11</sup> 47 C.F.R. § 1.106(k)(1).

<sup>12</sup> See *Sprint Corp. v. FCC*, 315 F.3d 369, 374-75 (D.C. Cir. 2003) (holding that a Commission action “revising and modifying” a rule was not “set[ting] aside” the rule within the scope of section 1.108).

<sup>13</sup> In the past, docketed adjudicatory proceedings have included, for example, applications to transfer licenses and authorizations in conjunction with the merger of companies; requests by Bell Operating Companies for authority under 47 U.S.C. § 271 to provide “in-region” long distance service in a particular state; and certain declaratory ruling and waiver proceedings.

<sup>14</sup> See 47 C.F.R. § 0.141(h).

process for a larger portion of Commission proceedings. The docket number, often in conjunction with enhanced electronic filing through ECFS as discussed below, should facilitate public access and participation in our proceedings. We seek comment on this general approach. In particular, are there specific types of proceedings that currently are not docketed that would be candidates to migrate to the formal docket system? In contrast, are there particular proceedings that do not lend themselves to the docket system and should continue to be handled in a non-docketed manner by the relevant bureau or office? In general, we believe it is in the public interest to utilize the formal docket system whenever it is technically feasible.<sup>15</sup> We recognize, however, that certain filings at the Commission by their nature may not be well suited for a docketed proceeding.<sup>16</sup> Thus, while we may be able to reduce the number and variety of non-docketed proceedings significantly, we may not be able to establish a system in which all proceedings are docketed. Filings made through electronic means other than ECFS, for example, such as in the licensing context through ULS, may be accessible to the public without the need for assigning the proceeding a docket number. We seek comment on these proposals and issues.

## 2. Greater Use of Electronic Filing

12. In 1998, the Commission amended its rules to permit electronic filing via the Internet of all pleadings in informal notice and comment rulemaking proceedings (other than broadcast allotment proceedings), notice of inquiry proceedings, and petition for rulemaking proceedings (except broadcast allotment proceedings).<sup>17</sup> The Commission also permits electronic filing through ECFS for certain adjudicatory proceedings on a case-by-case basis when so designated by the Commission or the staff. The Commission recently launched an enhanced and upgraded version of its ECFS that includes many new features and increased functionality.<sup>18</sup> These new enhancements include, for example:

For submitting comments:

- User-friendly forms used to upload and query
- All forms are compliant with section 508 of the Rehabilitation Act and the system is certified for use with screen readers for those visually handicapped persons who require screen readers
- Ability to submit a filing in multiple proceedings
- Ability to attach multiple files to one submission
- User-friendly Graphic User Interface using JAVA to permit easier navigation
- Ability to review and modify filings before submitting them
- Ability to send and process comments from international filers and U.S. Territories

For performing queries:

- Check filing status by confirmation number

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<sup>15</sup> Although we seek notice and comment here on the general approach of applying a formal docket process to additional Commission proceedings, we note that any subsequent determination that specific proceedings (or types of proceedings) should be docketed would not require the use of notice and comment procedures to the extent that those changes would involve matters of agency procedure and practice. See 5 U.S.C. § 553(b)(A).

<sup>16</sup> For example, the Commission receives thousands of informal complaints per year. It would seem to be cumbersome and unnecessary to create a separate docket for each of the thousands of such complaints, as they typically do not generate responsive pleadings from multiple commenters.

<sup>17</sup> 47 C.F.R. § 1.49(f); see *Electronic Filing of Documents in Rulemaking Proceedings*, Report and Order, 13 FCC Rcd 11322 (1998).

<sup>18</sup> See News Release, FCC Announces the Public Launch of the Electronic Comment Filing System (ECFS) Version 2.0 (Oct. 14, 2009).

- Sort the result set
- Display results in a group of specified size
- Display results in tabular (condensed) or expanded (detailed) format
- Export search results to Excel or PDF
- As noted above, system is compliant with section 508 of the Rehabilitation Act and certified for use with screen readers
- Display search records with a link to the PDF version of the comment
- RSS Feed for updates
- View ECFS Daily Report (from a calendar) that lists the daily additions to ECFS

13. Given the more robust electronic filing capability provided by ECFS, we seek comment on the efficacy of utilizing electronic filing of pleadings through ECFS in a broader array of Commission proceedings. The Commission receives paper-only filings in certain non-rulemaking matters that currently do not utilize ECFS or some other electronic filing mechanism such as ULS.<sup>19</sup> In addition, in certain types of proceedings, the Commission's rules provide for the electronic filing of applications, but not of responsive pleadings. When filings are made in paper format only and are not included in an electronic system (such as ECFS) that permits search and query functions, interested persons may find it difficult to follow and participate in our proceedings. Public access and transparency are not well served in those circumstances. In general, we believe that electronic filing through our enhanced ECFS or other electronic filing systems such as ULS better serves the public interest than a paper-only filing process. We thus seek to maximize electronic filing to the extent possible and minimize paper submissions at the Commission.

14. Accordingly, we propose an enhanced role for ECFS, and seek comment generally on issues raised by the increased use of electronic filing in Commission proceedings. In what types of non-rulemaking matters might it be appropriate to permit electronic filing of all pleadings through ECFS? Are there certain non-rulemaking proceedings that do not lend themselves to electronic filing of pleadings through ECFS? How should we amend section 1.49 of our rules (and any other rules the revision of which may be necessary) to augment the number of proceedings in which parties may file all pleadings through ECFS? Are there statutory implications for enhanced electronic filing that we should take into account, such as the Privacy Act?<sup>20</sup> If we permit more filings under ECFS, what are the implications for parties wishing to submit materials under a request for confidentiality under section 0.459 of our rules?<sup>21</sup>

15. As noted, the Commission has electronic filing mechanisms other than ECFS. These include, for example, a number of electronic filing systems for applications in the various broadcast and wireless services, including ULS (*see* para. 6, above).<sup>22</sup> How should such systems be harmonized with ECFS, or should they continue to operate independently of ECFS? For example, should filers using those systems be excluded from also filing through the ECFS system to avoid confusion or unnecessary duplication? Should they be permitted to file in either, or both, in the same proceeding?

16. Finally, we seek comment on whether electronic filings through ECFS or our other electronic filing systems should be "machine readable." Specifically, should text filings be in a searchable format (*e.g.*, Microsoft Word ".doc" format or non-copy protected text-searchable ".pdf" format)? Should submissions containing non-text information, particularly spreadsheets of data, be submitted in the format in which they were created, such as Microsoft Excel, Microsoft Word, or Microsoft PowerPoint ("native

<sup>19</sup> As noted above at para. 6, electronic pleadings filed through ULS are subject to separate procedures.

<sup>20</sup> 5 U.S.C. § 552a.

<sup>21</sup> 47 C.F.R. § 0.459.

<sup>22</sup> The Commission currently is reviewing options for consolidating its various electronic licensing systems.



format”)? We seek comment on these questions, and any other issues parties care to raise in connection with an enhanced role for filing pleadings through ECFS.<sup>23</sup>

### 3. Electronic Notification in Certain Proceedings

17. When required by statute or regulation, the Commission must serve copies of orders, pleadings, and other documents on parties to a proceeding.<sup>24</sup> Typically in such circumstances, service is effectuated by mail.<sup>25</sup> This process can be cumbersome and time consuming, for example when there are many parties to a particular proceeding, or when many documents in a particular docket must be served on the parties over the life of the proceeding. We seek to establish a more efficient approach. Accordingly, we propose to amend section 1.47 of the Commission’s rules to allow the agency to serve parties to a proceeding in electronic form (*e.g.*, email or an Internet-based notification system such as an RSS feed) following any change in the docket, to the extent the Commission is required to serve such parties. In a proceeding involving a large number of parties, we propose to satisfy the Commission’s service obligation by issuing a public notice that identifies the documents required to be served and that explains how parties can obtain copies of the documents. If we adopt such an approach, what number of parties ordinarily should trigger this procedure? Are there other factors, in addition to the number of parties, that should be taken into account when deciding whether to use this procedure in a particular matter? We seek comment on these proposals and questions.

### 4. Management of Dockets

18. When no further action in a docketed proceeding is required or contemplated, that proceeding should be terminated. Termination closes the docket to any new filings. A terminated docket remains part of the Commission’s official records, however, and its contents (pleadings, orders, etc.) continue to be accessible to the public.

19. The Commission currently has more than three thousand open dockets. Many of these dockets have seen little or no activity in years. In these circumstances, it is reasonable to assume that some open dockets may be candidates for termination. To address the current situation and to prevent its recurrence in the future, we propose to amend section 0.141 of our organizational rules to delegate authority to the Chief, Consumer and Governmental Affairs Bureau (“CGB”), through its component Reference Information Center, to review all open dockets periodically. When the CGB Chief identifies an open docket that appears to be a candidate for termination, the CGB Chief should consult with the relevant bureau or office with responsibility for that docket and, if the relevant bureau or office concurs, the staff should take action to close that docket. As noted above, candidates for termination might include, for example, dockets in which no further action is required or contemplated. In addition, is there some minimum period of dormancy (*i.e.*, when no pleadings have been filed) that might indicate a particular docket is a candidate for termination? What other criteria for termination might be appropriate? What procedures should we follow before terminating dockets? Should we first issue a public notice identifying particular dockets as candidates for termination before actually closing those dockets? We seek comment on these proposals and questions.

20. Another docket management issue involves the handling of dockets that are so large that they have become unwieldy. In such circumstances, often a bureau or office will open a new docket to remove one or more issues from a large docket, in an effort to avoid further expansion of the oversized docket.

<sup>23</sup> Just as with docketed proceedings, *see* n.15, above, we note that any subsequent determination that parties should be permitted to file all pleadings in specific proceedings (or types of proceedings) through ECFS would not require the use of notice and comment procedures to the extent that those changes would involve matters of agency procedure and practice. *See* 5 U.S.C. § 553(b)(A).

<sup>24</sup> *See* 47 C.F.R. § 1.47(a); *see also* 47 C.F.R. § 0.445(a) (stating that adjudicatory opinions and orders of the Commission or staff on delegated authority “are mailed to the parties”).

<sup>25</sup> *See* 47 C.F.R. § 1.47(f).

Oftentimes in practice, however, filings in the new docket will continue to include the old docket in the caption, essentially defeating the docket management function of having created the new docket. In an effort to rectify this situation, we propose to amend section 1.49 of our rules to specify that a filing should only be captioned with the docket number(s) particular to the issue(s) addressed in the filing. If the filing references superfluous or incorrect dockets, the Commission, through the Reference Information Center, would have the discretion to omit the filing from those dockets, and place it (only) in the correct docket(s). We seek comment on this proposal, including whether the benefits of erring on the side of over inclusiveness in dockets outweigh the administrative efficiencies and more narrowly tailored docket searchability that this proposal seeks to foster. We also solicit any other related suggestions to help the Commission manage its dockets and make them more user-friendly to, and searchable by, consumers and other users.

### C. Miscellaneous Part 1 Rules

21. We also propose to amend certain other Part 1 procedural rules to clarify and improve our practices. We propose these actions because our experience indicates that the current language of the rules has resulted in inconsistencies or uncertainties in the treatment of the matters in question.

#### 1. Section 1.427 – Effective Date of Rules

22. Although Commission rulemaking orders typically specify the effective date of adopted rules, the omission of such a statement can create confusion.<sup>26</sup> Section 1.427(a) of the Commission's rules, captioned "Effective date of rules," currently states:

(a) Any rule issued by the Commission will be made effective not less than 30 days from the time it is published in the Federal Register except as otherwise specified in paragraphs (b) and (c) of this section.<sup>27</sup>

That rule contemplates that, in cases when the exceptions in subsections (b) and (c) do not apply, the order adopting the rule will contain a statement specifying that the rule becomes effective not less than 30 days after publication in the Federal Register. The rule does not provide any guidance, however, in the case when the contemplated statement of effective date is omitted. Although it is desirable to include a specific statement of effective date in all cases, we find that it also is prudent to prescribe a default rule in the event an order omits such a statement. A default rule should help avoid confusion and undue disruption concerning the effective date of the rule. We therefore propose amending section 1.427(a) of the rules to provide that in the event a Commission order adopting a rule does not specify an effective date and does not affirmatively defer the setting of an effective date (as in circumstances when the rule is awaiting Paperwork Reduction Act approval), the rule will become effective 30 days after publication in the Federal Register unless a later effective date is required by statute.<sup>28</sup> We seek comment on this proposal.

<sup>26</sup> See *Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 17 FCC Rcd 21274, 21311 ¶ 110 (2002) (confusion may have resulted because Federal Register notice for the *Fourth Reconsideration Order* in CC Docket No. 96-128 adopted an effective date but the text of the order omitted the date).

<sup>27</sup> 47 C.F.R. § 1.427(a). Subsection (b) relates to specified situations in which a rule can become effective with less than 30 days notice. Subsection (c) concerns rules altering the manner or form of keeping accounts by carriers. See also 5 U.S.C. § 553(d) (publication or service of rule shall not be made less than 30 days before effective date unless an exception applies).

<sup>28</sup> For example, if a rule is determined to be a "major rule" under the Congressional Review Act, it generally may take effect unless Congress disapproves the rule 60 days after the rule is reported to Congress or is published in the Federal Register (if it is published), whichever is later. 5 U.S.C. § 804(2).



## 2. Section 1.4 – Computation of Time

23. Deadlines for Commission Action Established by Rule. Uncertainty can arise when the Commission’s rules provide that required Commission action becomes due on a day when the agency is not open for business. A provision of the Commission’s computation of time rule, section 1.4(j),<sup>29</sup> currently addresses that situation when the due date for a *party’s filing* falls on such a date:

(j) Unless otherwise provided (e.g. Sec. 76.1502(e) of this chapter) if, after making all the computations provided for in this section, the filing date falls on a holiday, the document shall be filed on the next business day. See paragraph (e)(1) of this section.<sup>30</sup>

Rule 1.4(j) does not address, however, the parallel situation in which specified *Commission action*, rather than a party’s filing, is by regulation due on a day when the agency is not open for business.<sup>31</sup> In those circumstances, we tentatively conclude that the reasonable expectation is that, when the due date for Commission action would otherwise fall on a holiday, as defined by section 1.4(e)(1) of the rules, the due date would be extended to the next business day. We seek comment on this proposal.

24. Deadlines for Commission Action Established by Statute. Section 1.4 by its terms “applies to computation of time for seeking both reconsideration and judicial review of Commission decisions.”<sup>32</sup> The rule permits parties to make such filings on the next business day when the filing deadline otherwise would fall on a holiday.<sup>33</sup> Each of those deadlines is established by statute rather than by Commission rule.<sup>34</sup> Through section 1.4(a), we thus have announced in advance our construction of certain statutory filing deadlines applicable to parties to make clear that parties may invoke the “next business day” procedure when the filing date would otherwise fall on a holiday.

25. We seek comment on whether we should follow the same approach to statutory deadlines applicable to the Commission. The Communications Act, in particular, establishes various deadlines for Commission action.<sup>35</sup> May we, and if so should we, construe such deadlines to incorporate the “next business day” procedure, as we have for certain statutory deadlines applicable to parties? Specifically, if a statutory deadline for Commission action falls on a holiday (as defined in section 1.4(e)(1)), should we by rule announce our intention to construe the statute to require Commission action on the next business day? If so, what changes should we make to section 1.4 to effectuate this approach?

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<sup>29</sup> 47 C.F.R. § 1.4(j).

<sup>30</sup> 47 C.F.R. § 1.4(e)(1) (definition of “holiday”).

<sup>31</sup> See, e.g., 47 C.F.R. § 1.108 (Commission reconsideration on its own motion within 30 days); 47 C.F.R. § 1.117 (Commission review of staff action under delegated authority within 40 days).

<sup>32</sup> 47 C.F.R. § 1.4(a).

<sup>33</sup> 47 C.F.R. §§ 1.4(j) (if “the filing date falls on a holiday, the document shall be filed on the next business day”); 1.4(e)(1) (definition of “holiday”).

<sup>34</sup> Petitions for reconsideration must be filed within 30 days from the date public notice is given of the Commission order. 47 U.S.C. § 405(a). A Notice of Appeal of certain Commission licensing decisions must be filed within 30 days from the date public notice is given of the Commission’s order. 47 U.S.C. § 402(b), (c). A Petition for Review of most Commission decisions must be filed within 60 days from the date public notice is given of the Commission’s order. 47 U.S.C. § 402(a); 28 U.S.C. § 2344.

<sup>35</sup> See, e.g., 47 U.S.C. § 160(c) (deadline for Commission to rule on petitions for forbearance); 47 U.S.C. § 204(a)(2)(A) (deadline for Commission to issue an order concluding certain tariff investigations); 47 U.S.C. § 208(b) (deadline for Commission to issue an order concluding certain complaint investigations); 47 U.S.C. § 271(d)(3) (deadline for Commission to issue an order approving or denying a Bell Operating Company application to provide “in-region” long distance service in a particular state).

### III. PROCEDURAL MATTERS

26. *Comment Filing Procedures.* Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/>.
- ECFS filers must transmit one electronic copy of the comments for GC Docket No. 10-44. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW, Room TW-A325, Washington, D.C. 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington, D.C. 20554.

27. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street SW, Room CY-B402, Washington, D.C. 20554, (202) 488-5300, or via email to [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com). Documents in GC Docket No. 10-44 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY-A257, Washington, D.C. 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com).

28. *Ex Parte Presentations.* The rulemaking this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>36</sup> Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-

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<sup>36</sup> 47 C.F.R. §§ 1.1200 *et seq.*

sentence description of the views and arguments presented generally is required.<sup>37</sup> Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.<sup>38</sup>

29. *Accessible Formats*: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

30. *Regulatory Flexibility Act*. Our action does not require notice and comment,<sup>39</sup> and therefore falls outside of the Regulatory Flexibility Act of 1980, as amended.<sup>40</sup> We nonetheless note that we anticipate that the rules we propose today will not have a significant economic impact on a substantial number of small entities. As described above, in proposing to revise certain of our Part 1 Rules of Practice and Procedure and our Part 0 Rules of Commission Organization, we mainly propose to change our own internal procedures and organization and do not impose substantive new responsibilities on regulated entities. There is no reason to believe that operation of the proposed rules would impose significant costs on parties to Commission proceedings. We will send a copy of this Notice of Proposed Rulemaking to the Chief Counsel of Advocacy of the SBA.

31. *Paperwork Reduction Act*. This proceeding may result in new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995.<sup>41</sup> In addition, pursuant to the Small Business Paperwork Relief Act of 2002,<sup>42</sup> we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."<sup>43</sup>

#### IV. ORDERING CLAUSES

32. ACCORDINGLY, IT IS ORDERED, pursuant to sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 303(r), that NOTICE IS HEREBY GIVEN of the proposed regulatory changes described above, and that COMMENT IS SOUGHT on these proposals.

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<sup>37</sup> See 47 C.F.R. § 1.1206(b)(2).

<sup>38</sup> 47 C.F.R. § 1.1206(b).

<sup>39</sup> See n.1, above.

<sup>40</sup> See 5 U.S.C. §§ 601(2), 603(a).

<sup>41</sup> Pub. L. No. 104-13.

<sup>42</sup> Pub. L. No. 107-198.

<sup>43</sup> 44 U.S.C. § 3506(c)(4).

33. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX****Proposed Rules**

[Note: proposed revised language is indicated by shading]

Part 0 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

Part 0 – Commission Organization

**1. The authority citation for part 0 continues to read as follows:**

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

**2. Section 0.141 is amended by revising paragraph (h) to read as follows:**

§ 0.141 Functions of the Bureau

\*\*\*\*

(h) Serves as the official FCC records custodian for designated records, including intake processing, organization and file maintenance, reference services, and retirement and retrieval of records; manages the Electronic Comment Filing System and certifies records for adjudicatory and court proceedings. Maintains manual and computerized files that provide for the public inspection of public record materials concerning Broadcast Ownership, AM/FM/TV, TV translators, FM Translators, Cable TV, Wireless, Auction, Common Carrier Tariff matters, International space station files, earth station files, DBS files, and other miscellaneous international files. Also maintains for public inspection Time Brokerage and Affiliation Agreements, court citation files, and legislative histories concerning telecommunications dockets. Provides the public and Commission staff prompt access to manual and computerized records and filing systems. Periodically reviews the status of open docketed proceedings and, in consultation with the relevant bureau or office with responsibility for a particular proceeding, closes any docket in which no further action is required or contemplated.

**3. Section 0.445 is amended by revising paragraph (a) to read as follows:**

§ 0.445 Publication, availability and use of opinions, orders, policy statements, interpretations, administrative manuals, and staff instructions.

(a) Adjudicatory opinions and orders of the Commission, or its staff acting on delegated authority, are mailed or delivered by electronic means to the parties, and as part of the record, are available for inspection in accordance with §§ 0.453 and 0.455.

Part 1 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

Part 1 – Practice and Procedure

**1. The authority citation for part 1 is amended to read as follows:**

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), and 309.

**2. Section 1.4 is amended by revising paragraphs (a) and (j) to read as follows:**

§ 1.4 Computation of Time.

(a) *Purpose.* The purpose of this rule section is to detail the method for computing the amount of time within which persons or entities must act in response to deadlines established by the Commission. It also applies to computation of time for seeking both reconsideration and judicial review of Commission decisions. In addition, this rule section prescribes the method for computing the amount of time within which the Commission must act in response to deadlines established by a Commission rule or order.

\* \* \* \*

(j) Unless otherwise provided (e.g. §76.1502(e) of this chapter) if, after making all the computations provided for in this section, the filing date falls on a holiday, the document shall be filed on the next business day. See paragraph (e)(1) of this section. If a rule or order of the Commission specifies that the Commission must act by a certain date and that date falls on a holiday, the Commission action must be taken by the next business day.

**3. Section 1.47 is amended by revising paragraph (a) to read as follows:**

§ 1.47 Service of documents and proof of service.

(a) Where the Commission or any person is required by statute or by the provisions of this chapter to serve any document upon any person, service shall (in the absence of specific provisions in this chapter to the contrary) be made in accordance with the provisions of this section. Documents that are required to be served by the Commission may be served in electronic form. In proceedings involving a large number of parties, the Commission may satisfy its service obligation by issuing a public notice that identifies the documents required to be served and that explains how parties can obtain copies of the documents.

**4. Section 1.49 is amended by adding a new paragraph (g) to read as follows:**

§ 1.49 Specifications as to pleadings and documents.

\* \* \* \*



(g) The caption of a pleading or other document filed in a docketed proceeding should reference only the docket number(s) particular to the issue(s) addressed in the document. When the document references superfluous or incorrect dockets, the Commission may omit the document from such dockets and place it (only) in the correct docket(s).

**5. Section 1.106 is amended by revising the caption and paragraphs (a)(1), (b), (c), (d), (i), and (j), and by adding a new paragraph (p), to read as follows:**

§ 1.106 Petitions for reconsideration in non-rulemaking proceedings.

(a)(1) Except as provided in paragraphs (b)(3) and (p) of this section, petitions requesting reconsideration of a final Commission action in non-rulemaking proceedings will be acted on by the Commission. Petitions requesting reconsideration of other final actions taken pursuant to delegated authority will be acted on by the designated authority or referred by such authority to the Commission. A petition for reconsideration of an order designating a case for hearing will be entertained if, and insofar as, the petition relates to an adverse ruling with respect to petitioner's participation in the proceeding. Petitions for reconsideration of other interlocutory actions will not be entertained. (For provisions governing reconsideration of Commission action in notice and comment rule making proceedings, see § 1.429. This § 1.106 does not govern reconsideration of such actions.)

\* \* \* \*

(b) \* \* \* \*

(2) Where the Commission has denied an application for review, a petition for reconsideration will be entertained only if one or more of the following circumstances are present:

(i) The petition relies on facts or arguments which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission; or

(ii) The petition relies on facts or arguments unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity.

(3) A petition for reconsideration of an order denying an application for review which fails to rely on new facts or changed circumstances may be dismissed by the staff as repetitious.

(c) In the case of any order other than an order denying an application for review, a petition for reconsideration which relies on facts or arguments not previously presented to the Commission or to the designated authority may be granted only under the following circumstances:

(1) The facts or arguments fall within one or more of the categories set forth in § 1.106(b)(2); or

(2) The Commission or the designated authority determines that consideration of the facts or arguments relied on is required in the public interest.

(d)(1) A petition for reconsideration shall state with particularity the respects in which petitioner believes the action taken by the Commission or the designated authority should be changed. The petition

shall state specifically the form of relief sought and, subject to this requirement, may contain alternative requests.

(2) A petition for reconsideration of a decision that sets forth formal findings of fact and conclusions of law shall also cite the findings and/or conclusions which petitioner believes to be erroneous, and shall state with particularity the respects in which he believes such findings and/or conclusions should be changed. The petition may request that additional findings of fact and/or conclusions of law be made.

\* \* \* \*

(i) Petitions for reconsideration, oppositions, and replies shall conform to the requirements of §§ 1.49, 1.51, and 1.52 and shall be submitted to the Secretary, Federal Communications Commission, Washington, D.C., 20554, by mail, by commercial courier, by hand, or by electronic submission through the Commission's Electronic Comment Filing System or other electronic filing system (such as ULS). Petitions submitted by electronic mail and petitions submitted directly to staff without submission to the Secretary shall not be considered to have been properly filed. Parties filing in electronic form need only submit one copy.

(j) The Commission or designated authority may grant the petition for reconsideration in whole or in part or may deny or dismiss the petition. Its order will contain a concise statement of the reasons for the action taken. Where the petition for reconsideration relates to an instrument of authorization granted without hearing, the Commission or designated authority will take such action within 90 days after the petition is filed.

\* \* \* \*

(p) Petitions for reconsideration of a Commission action that plainly do not warrant consideration by the Commission may be dismissed or denied by the Chief(s) of the relevant bureau(s) or office(s). Examples include, but are not limited to, petitions that: (i) fail to identify any material error, omission, or reason warranting reconsideration; (ii) rely on facts or arguments which have not previously been presented to the Commission and which do not meet the requirements of subsections (b)(2), (b)(3), or (c); (iii) rely on arguments that have been fully considered and rejected within the same proceeding; (iv) fail to state with particularity the respects in which petitioner believes the action taken should be changed as required by subsection (d); (v) relate to matters outside the scope of the order for which reconsideration is sought; (vi) omit information required by these rules to be included with a petition for reconsideration, such as the affidavit required by § 1.106(e) (relating to electrical interference); (vii) fail to comply with the procedural requirements set forth in subsections (f) and (i); (viii) relate to an order for which reconsideration has been previously denied on similar grounds, except for petitions which could be granted under § 1.106(c); or (ix) are untimely.

## 6. Section 1.108 is amended to read as follows:

### § 1.108 Reconsideration on Commission's own motion.

The Commission may, on its own motion, reconsider any action made or taken by it within 30 days from the date of public notice of such action, as that date is defined in §1.4(b) of these rules. When acting on its own motion under this section, the Commission may take any action it could take in acting on a petition for reconsideration, as set forth in § 1.106(k) of this chapter.

**7. Section 1.427 is amended by revising paragraph (a) to read as follows:**

§ 1.427 Effective date of rules.

(a) Any rule issued by the Commission will be made effective not less than 30 days from the time it is published in the Federal Register except as otherwise specified in paragraphs (b) and (c) of this section. If the report and order adopting the rule does not specify the date on which the rule becomes effective, the effective date shall be 30 days after the date on which the rule is published in the Federal Register, unless the report and order affirmatively defers the setting of an effective date or a later effective date is required by statute.

**8. Section 1.429 is amended by revising the caption and paragraphs (b), (h), and (i), and by adding a new paragraph (l), to read as follows:**

§ 1.429 Petition for reconsideration of final orders in rulemaking proceedings.

\* \* \* \*

(b) A petition for reconsideration which relies on facts or arguments which have not previously been presented to the Commission will be granted only under the following circumstances:

(1) The facts or arguments relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission;

(2) The facts or arguments relied on were unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity; or

(3) The Commission determines that consideration of the facts or arguments relied on is required in the public interest.

\* \* \* \*

(h) Petitions for reconsideration, oppositions and replies shall conform to the requirements of §§ 1.49 and 1.52, except that they need not be verified. Except as provided in § 1.420(e), an original and 11 copies shall be submitted to the Secretary, Federal Communications Commission, Washington, D.C. 20554, by mail, by commercial courier, by hand, or by electronic submission through the Commission's Electronic Comment Filing System. Petitions submitted by electronic mail and petitions submitted directly to staff without submission to the Secretary shall not be considered to have been properly filed. Parties filing in electronic form need only submit one copy.

(i) The Commission may grant the petition for reconsideration in whole or in part or may deny or dismiss the petition. Its order will contain a concise statement of the reasons for the action taken. Any order addressing a petition for reconsideration which modifies rules adopted by the original order is, to the extent of such modification, subject to reconsideration in the same manner as the original order. Except in such circumstance, a second petition for reconsideration may be dismissed by the staff as repetitious. In no event shall a ruling which denies a petition for reconsideration be considered a modification of the original order.

\* \* \* \*

(l) Petitions for reconsideration of a Commission action that plainly do not warrant consideration by the Commission may be dismissed or denied by the Chief(s) of the relevant bureau(s) or office(s). Examples include, but are not limited to, petitions that: (i) fail to identify any material error, omission, or reason warranting reconsideration; (ii) rely on facts or arguments which have not previously been presented to the Commission and which do not meet the requirements of subsection (b)(1)-(b)(3); (iii) rely on arguments that have been fully considered and rejected within the same proceeding; (iv) fail to state with particularity the respects in which petitioner believes the action taken should be changed as required by subsection (c); (v) relate to matters outside the scope of the order for which reconsideration is sought; (vi) omit information required by these rules to be included with a petition for reconsideration; (vii) fail to comply with the procedural requirements set forth in subsections (d), (e), and (h); (viii) relate to an order for which reconsideration has been previously denied on similar grounds, except for petitions which could be granted under § 1.429(b); or (ix) are untimely.

**STATEMENT OF  
CHAIRMAN JULIUS GENACHOWSKI**

Re: *In the Matter of Amendment of the Commission's Ex Parte Rules and Other Procedural Rules*, GC Docket No. 10-43; *In the Matter of Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization*, GC Docket No. 10-44

These two Notices propose reforms that should make the Commission's procedural rules more effective and fairer. By increasing the use of electronic filing, refining our rules on *ex parte* presentations, and making other commonsense changes, we intend make it easier for interested parties to participate in our proceedings and easier for the public to understand the processes we use and the reasons for our decisions.

The growing importance of communications to our daily lives and our economy has expanded the range of issues before the Commission and the number of parties that file pleadings with us. Our processes and systems must be up to the job. Yet the Commission lags behind many other agencies, as well as federal and state courts, that have already implemented e-filing for all their proceedings. This Commission should lead, not follow, in using electronic filing, because it will reduce costs, speed the resolution of pending issues, and make our proceedings easier for the public to follow. I look forward to implementing the rule changes that will bring this about.

Nothing is more critical to assuring the integrity of our proceedings than the way we document *ex parte* communications. Over thirty years ago, the D.C. Circuit's *Home Box Office* decision struck down Commission cable rules in part because hundreds of undocumented *ex parte* contacts had occurred. While noting that it was not illegal for the Commission to entertain *ex parte* contacts, the Court instructed that the records of Commission proceedings must reveal all the information made available *ex parte* so that it can be understood and debated. *Home Box Office v. FCC*, 567 F.2d 9, 118 (1977).

Given the complexity and importance of the issues that come before us, *ex parte* communications remain an essential part of our deliberative process. It is essential that industry and public stakeholders know the facts and arguments presented to us in order to express informed views. The modified *ex parte* rules we propose today will help achieve that. When all written *ex parte* materials and summaries of all oral *ex parte* communications are substantive, complete, filed quickly in the record, and immediately available online, special interests are revealed and no party has unfair access to inside information. This is the essence of transparency, and I look forward to implementing the rule changes that will help bring it about.

Finally, I would like to express my appreciation of the fine work done by the FCC Reform Team and the Office of General Counsel in bringing these proposals to us for a vote today. As these two Notices reinforce, strong procedural rules are indispensable to achieving openness, transparency, and timeliness in our substantive decisions.

**STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

Re: *In the Matter of Amendment of the Commission's Ex Parte Rules and Other Procedural Rules*, GC Docket No. 10-43; *In the Matter of Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization*, GC Docket No. 10-44

Reform has clearly come to the FCC. In my first week as Acting Chairman last year, I had the privilege of addressing the Commission staff on the need to revitalize and reenergize the operations of the agency. I said then we must always strive to improve our lines of communication, enhance the level of transparency in our work and bring to our daily decisions the kind of openness that gives true credibility to everything we do. We have made progress. Today's presentation makes that clear, even as it makes clear that we have much more work ahead in many key areas. I want to thank Mary Beth Richards and Austin Schlick for their thoughtful comments, and would particularly like to commend Chairman Genachowski for his focus on the issue and also for his good judgment in designating Mary Beth as Special Counsel on FCC Reform.

Today's two specific Notices of Proposed Rulemaking make an essential down-payment on the broader reform agenda. First, at long last, we launch a proceeding to improve the transparency and effectiveness of our decision-making process by reforming our *ex parte* rules. Sound *ex parte* rules are critical to ensuring that everyone has a fair opportunity to respond to the arguments made or positions set forth in oral communications with the Commission. We all welcome the opportunity for face-to-face meetings with outside experts. That said, we realize that Commission decisions should always rest upon the solid foundation of the public interest—not the interests of lobbyists discussed in closed-door meetings. Too many times we receive *ex parte* filings that simply reference that a meeting took place on a given topic—without remotely approaching a sufficient level of detail on the arguments or data presented to allow the public or interested parties to respond. That is why I am pleased to support proposals to make disclosure more robust in more cases, and to begin aggressively enforcing our *ex parte* rules.

Second, by proposing revisions to certain procedural and organizational rules, we are taking steps to modernize and improve the efficiency of the agency. For example, we propose to delegate authority to the expert Bureaus to dismiss or deny procedurally defective petitions for reconsideration of Commission action. Steps like these can help provide the full Commission with more time and energy to address the many critical issues confronting us.

I would like to thank the staff in the Office of General Counsel and the Office of Managing Director for their work on today's Notices of Proposed Rulemaking. I look forward to working with the Chairman and my colleagues on these and further reforms.

I also want to express my appreciation for efforts in Congress led by Representatives Bart Stupak, Anna Eshoo and Mike Doyle to reform the work of the agency by proposing to eliminate the statutory prohibition on more than two Commissioners talking together outside a public meeting. My experience tells me very clearly that this bar has had seriously pernicious and unintended consequences—stifling collaborative discussions among colleagues, delaying timely decision-making by the agency, discouraging collegiality and short-changing the public interest. This proposed legislation would constitute as major a reform of Commission procedures as any I can contemplate. Put that together with the work Mary Beth is helping us do and we'd have a record of historic procedural reform here at the FCC.



**STATEMENT OF  
COMMISSIONER ROBERT M. McDOWELL**

Re: *In the Matter of Amendment of the Commission's Ex Parte Rules and Other Procedural Rules*, GC Docket No. 10-43; *In the Matter of Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization*, GC Docket No. 10-44

Thank you to Mary Beth Richards, Steve Van Roekel, Austin Schlick, Paul de Sa, and your teams for your efforts in reforming our agency. We are grateful for your energy, enthusiasm and creativity. Reform is not necessarily a flashy topic, but it is important work.

As you know, I have sought reform for some time now, first sharing my thoughts with then-Acting Chairman Copps last January, followed several months later with a letter to then-new Chairman Genachowski.

I applaud your efforts to boost employee morale and create a more collaborative decision-making process. We have published Commission meeting dates for the entire year. We have provided opportunities for comment from the public, as well as the Commission staff (anonymously). I also appreciate the ongoing efforts to update the Commission's IT and web systems, which were especially helpful during the government shut down due to the recent blizzards. And I am pleased to have had the opportunity to provide suggestions and to receive updates on the progress. Thank you also for your work to analyze the financial aspects of our agency. This is long overdue. I look forward to learning more about the KPMG audit, as well as the internal review of universal service funding systems.

Turning to today's notices, I thank my colleagues for supporting my suggestions to clarify and improve them. Needless to say, I am eager to engage with interested parties as we receive comments and suggestions. With respect to the notice regarding the Commission's *ex parte* rules, I'd like to flag a few issues.

At the outset, I will say that I am not convinced that our *ex parte* rules need to be changed. I am convinced, however, that we can and must step up our enforcement of the rules. During my tenure here, there have been some obvious examples of deficient filings. I hope, at long last, we will actually take formal action in those instances that merit doing so. I would imagine that tougher consequences would do more to deter bad behavior than any new rules.

Along these lines, I am interested in learning more about the consequences of not proposing rule changes that would address the *ex parte* implications of new media. I question whether we have created a back-door invitation for *ex parte* presentations that would otherwise be prohibited. What is the difference between a filing made during the Sunshine prohibition period through the Commission's electronic filing system and the same filing posted to one of our blogs?

Similarly, I am interested in learning more about the proposal to require the filing of ownership disclosures along with *ex parte* notices. First, the Commission currently requires several sets of licensees to regularly submit ownership information. Second, corporate ownership data is readily available not only within the FCC's own licensing systems, but also through SEC filings. Indeed, in the Internet age, one need only make a few additional clicks to find meaningful information on an unlimited number of topics. Finally, I wonder whether our proposals will treat participating parties in a neutral manner? In other words, will those entities with corporate form bear a heavier burden than those groups that may be structured and funded differently? How will this effect participation in the Commission's processes? I look forward to exploring answers to these and many other questions to see whether we need to act further.

Thanks again to everyone that is assisting with our reform efforts. I appreciate your care and diligence, and look forward to future presentations.

**STATEMENT OF  
COMMISSIONER MIGNON L. CLYBURN**

Re: *In the Matter of Amendment of the Commission's Ex Parte Rules and Other Procedural Rules*, GC Docket No. 10-43; *In the Matter of Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization*, GC Docket No. 10-44

When Chairman Genachowski assumed the helm of the agency, he made clear that one of his top priorities was to “reboot” the FCC. These two items fulfill his commitment to improve our processes in a manner that benefits the Commission staff, individuals and entities that interact with the Commission, and ultimately, consumers.

One of the most important steps the Chairman has taken in seeking to reform our internal procedures is to look, well, inward. Mary Beth Richards and Steve VanRoekel have solicited feedback from employees throughout the agency who are intimately familiar with the challenges of keeping things running smoothly. As a result, we were able to identify a number of material measures designed to improve and modernize the agency.

I am particularly interested in receiving comments on our Notice concerning the Commission's ex parte rules. It is essential that the substance of *ex parte* presentations are made public in an accessible manner. This is imperative not only for purposes of judicial review, but also to encourage meaningful public participation. If we are serious about increasing transparency – and I believe each of us is – it is critical that we give the public a window into the information we receive. That window must not only illuminate exactly what was covered in those meetings, but must also be opened in a timely fashion. Our rules must account equally for sophisticated repeat players and those who are seeking to register input with the Commission for the first time.

The Sunshine period is another significant area of inquiry. I would like to know how commenters believe we can best balance our need for information with legitimate concerns about the potential for abuse. While it can be useful for Commission staff to touch base with outside parties during the days immediately preceding an important vote, there undoubtedly are valid concerns about the nature and disclosure of such contacts. These are areas worthy of our undivided attention.

I thank the Chairman and his staff, as well as the Offices of the Managing Director and General Counsel for producing this thoughtful item.